



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2013

Ms. Karon Newby-Cooley
Records Clerk
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691

OR2013-05575

Dear Ms. Newby-Cooley:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 483292.

The Pflugerville Police Department (the "department") received a request for any information pertaining to the requestor. You state you are releasing some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. You raise section 552.101 in conjunction with section 58.007 of the Family Code, which reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007 does not apply to information that does not concern a juvenile offender. *See id.* § 51.04(a) (stating title 3 of Juvenile Justice Code covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child). Upon review, the information at issue does not concern a juvenile offender. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Juvenile Justice Code). Therefore, the department may not withhold the information at issue based on section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Id. § 261.201(a), (k). Upon review, we find the report and video recording associate with case number 08080558 were used or developed in an investigation under chapter 261 of the Family Code. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of Family Code), 101.003(a) (defining “child” as person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Accordingly, we determine the report and video recording associate with case number 08080558 are confidential under section 261.201. Although the requestor is the mother of the child victim named in the report, and the requestor is not alleged to have committed the suspected abuse, the child victim is now at least eighteen years old. Thus, the requestor no longer has a right of access to her adult child’s records under section 261.201(k). You have not indicated that the department has adopted a rule that governs the release of this type of information. Thus, we assume that no such regulation exists. Therefore, the department must withhold the report and video recording associate with case number 08080558 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORDs 393, 339; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victim of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); ORD 440 (detailed descriptions of serious sexual offenses must be withheld). Upon review, we find case number 11050077 pertains to an alleged sexual assault. Additionally, the requestor knows the identity of the alleged victim of the sexual assault. Thus, withholding only the victim’s identifying information from this requestor would not preserve the victim’s common-law right to privacy. Accordingly, to protect the victim’s privacy, we conclude the department must withhold the report, call sheet, and video recording pertaining to case number 11050077 in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued

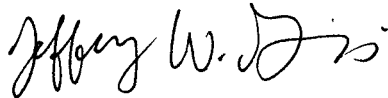
by an agency of this state or another state or country is excepted from public release.¹ Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the report and video recording pertaining to case number 08080558 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the report, call sheet, and video recording pertaining to case number 11050077 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note the requestor has a special right of access to some of the information being released in this instance, including her driver's license number. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. See *id.* § 552.130(c). Thus, if the department receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the department to redact the driver's license number at issue.

Ref: ID# 483292

Enc. Submitted documents

c: Requestor
(w/o enclosures)